IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 18974 OF 2005

DATE OF DECISION: May 10, 2007

Parties Name

Amarjeet Kaur

..PETITIONER

VERSUS

Union of India and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE NIRMAL YADAV

PRESENT: Mr. Deepak Sibal,
Advocate, for the petitioner.

Mr. S.K.Sharma, Advocate,

JASBIR SINGH, J. (oral)

Order.

Vide order dated September 16, 1999, services of the petitioner Amarjeet Kaur were terminated. She raised an industrial dispute. Matter was referred to the Industrial Tribunal-cum- Labour Court, Chandigarh, for adjudication. The case was fixed on February 21, 2002, and the same was dismissed vide order Annexure P-2 on account of non-appearance of both the parties. Petitioner got intimation of dismissal of her claim vide letter dated June 5, 2002 (Annexure P-5). Immediately thereafter, she filed an application to recall order Annexure P-2 but the same was dismissed vide order dated May 25, 2005 (Annexure P-4).

Counsel for the petitioner states that she had engaged a counsel to put in appearance before the Tribunal on the date fixed but her counsel defaulted, on account of which her claim was dismissed for non-prosecution

and the reference was returned to the Central Government on February 21, 2002. When the petitioner got intimation in that regard vide letter dated June 5, 2002, Annexure P-5, she filed an application before the Court below with a prayer that the order, passed earlier, be recalled and the matter be decided on merits. That application was also dismissed on a technical ground that the Court, after publication of the order dated February 21, 2002, had become functus officio.

Sequence of events and the facts of this case indicate that it was negligence of the counsel, who failed to appear before the competent Court on the date fixed. For that default, petitioner cannot be penalised.

Matters are required to be disposed of on merits and not on technicalities alone. Rules are handmaid of justice. These are meant to enhance its cause and not to scuttle the same. Their Lordships of the Supreme Court in Sardar Amarjit Singh Kalra (dead) by L.Rs. and others v. Parmod Gupta (Smt.) (dead by L.Rs. and others, (2003) 3 S.C.C. 272, in para 26 of the judgment had opined as under:-

> "Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."

View extracted above, was reiterated by their Lordships of the Supreme Court in N. Balajit v. Virender Singh and others, (2004) 8

Supreme Court Cases 312, wherein after noting ratio of the judgment, referred to above, in para 10 of the judgment, it was observed that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice.

This is a case where valuable right of the petitioner is going to be defeated on account of some negligence, shown by her counsel. The respondents will not suffer if the matter is allowed to be decided on merits. Furthermore, intention of the petitioner in getting the matter decided on merits is apparent from a fact that immediately after receipt of letter Annexure P-5, she filed an application to recall the order.

In view of facts of this case, we allow this writ petition and set aside orders Annexures P-2 and P-4. Matter is remitted to the Tribunal below to decide it afresh on merits. Parties are directed to appear before the Court below on June 4, 2007.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

May 10, 2007.
DKC